



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO MUNTERS CORPORATION FOR DES CHAMPS LABORATORIES EPA ID No. VAR 000 011 007

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and Munters Corporation, regarding the Des Champs Laboratories, for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "CESQG" means a conditionally exempt small quantity generator of hazardous waste, a generator of less than 100 kilograms of hazardous waste in a month and meeting the other restrictions of 40 CFR § 261.5 and 9 VAC 20-60-261.A.
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Facility" or "Site" means the Munters Corporation's Facility located at 225 S. Magnolia Ave, in Buena Vista, Virginia.
7. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
8. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
9. "LQG" means large quantity generator, a hazardous waste generator that generates 1000 kilograms (2200 pounds) or greater of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(a)-(b) and (g)-(l).
10. "Munters" means Munters Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Munters is a "person" within the meaning of Va. Code § 10.1-1400.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
13. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
14. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the Code of Federal Regulations (CFR), with the effected date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
15. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
16. "SQG" means a small quantity generator, a hazardous waste generator that generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and meets other restrictions. *See* 40 CFR § 262.34(d)-(f).

17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.
19. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. Munters owns and operates the Facility in Buena Vista, Virginia. The Facility operates an industrial heating, ventilation and air conditioning assembly plant. Operations at the Facility are subject to the Virginia Waste Management Act and the Regulations.
2. Munters submitted a RCRA Subtitle C Site Identification Form (8700-12) (received July 30, 1998) that gave notice of regulated waste activity at the Facility as an SQG of hazardous waste. Munters was issued EPA ID No. VAR 000 011 007 for the Facility.
3. At the Facility, Munters generates waste solids containing flammable liquid Xylene and Methyl Isobutyl Ketone which are Hazardous Waste Solids and a D001 and F003 listed waste as described in 40 CFR § 262.21 and 40 CFR § 262.31. This Hazardous Waste is accumulated in containers at the Facility after its generation.
4. On June 29, 2010, Department staff inspected the Facility for compliance with the requirements of the Virginia Waste Management Act and the Regulations. Based on the inspection and follow-up information, Department staff made the following observations:
 - a. Manifest # 5020417 showed that, between June 2008 and March 2009 (over approximately 330 days), Munters Corporation accumulated 2800 gallons of Hazardous Waste Solids containing flammable liquid Xylene and Methyl Isobutyl Ketone (D001, F003)
 - b. The Facility accumulated Large Quantity Generator (LQG) amounts of hazardous waste and has not paid an annual fee and has not notified DEQ of this occurrence.
 - c. Facility personnel did not inspect the hazardous waste accumulation areas on a weekly basis.
5. 9 VAC 20-60-1260(B) of the VHWMR requires that each large quantity generator of hazardous waste shall be assessed an annual fee as shown in 9 VAC 20-60-1285(G) to be paid in accordance with 9VAC 20-60-1280.
6. 9 VAC 20-60-315(D) of the VHWMR requires that anyone who becomes a large quantity generator shall notify the department in writing immediately of this change in status and document the change in the operating record.

7. 40 CFR 265.174 as required by 40 CFR 262.34 (d)(2) and as referenced in 9 VAC 20-60-262 and 265 of the VHWMR requires that at least weekly, the owner or operator inspects areas where containers of Hazardous Waste are stored.
8. On September 8, 2010, based on the inspection and follow-up information, the Department issued Notice of Violation No. 10-07-VRO-001 to Munters for the violations described in paragraphs C(4) through (7), above.
9. On September 20, 2010, a Munters Representative contacted DEQ staff in response to the NOV. Munters believed that one of the noted violations was the result of a typographical error. On a March 25, 2009 hazardous waste manifest, an employee had marked down 2800 gallons of hazardous waste when it should have read 2800 pounds (equivalent to 1270 Kg). Subsequently, DEQ staff received a copy of a corrected hazardous manifest and a copy of their annual generator report to confirm this. Additionally, DEQ received copies of every weekly inspection report of the hazardous waste storage areas that had been performed since the DEQ's inspection on June 29, 2010, in response to the violation noted in paragraph C.4.c.
10. On September 21, 2010, DEQ staff contacted Munters to discuss the remaining violations. The corrected manifest submitted to the DEQ on September 20, 2010, confirmed that Munters had accumulated approximately 1270 kilograms. This confirmed that Munters had exceeded the monthly generation amount allowed for SQGs by 270 kilograms.
11. Based on the results of June 29, 2010, inspection and the documentation submitted on September 20, 2010, the Board concludes that Munters has violated 9 VAC 20-60-262, 9 VAC 20-60-1260(B) and 9 VAC 20-60-315(D) as described in paragraphs C(4) through C(7), above.
12. In order for Munters to complete its return to compliance, DEQ staff and representatives of Munters have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Munters, and Munters agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$7,439.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Munters shall include its Federal Employer Identification Number (FEIN) 84-0830599 with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Munters for good cause shown by Munters, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Munters admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Munters consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Munters declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Munters to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Munters shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Munters shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Munters shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Munters intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Munters.

11. This Order shall continue in effect until:

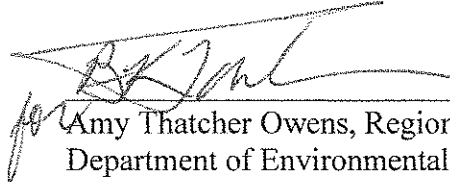
- a. Munters petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Munters.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Munters from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

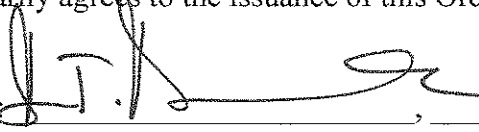
12. Any plans, reports, schedules or specifications attached hereto or submitted by Munters and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Munters certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Munters to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Munters.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Munters voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16th day of August, 2011.


for Amy Thatcher Owens, Regional Director
Department of Environmental Quality

Munters Corporation voluntarily agrees to the issuance of this Order.

Date: 7-6-11 By:  Director, VA Operations
(Person) (Title)
Munters Corporation

Commonwealth of Virginia

City/County of Buena Vista

The foregoing document was signed and acknowledged before me this 6 day of July, 2011, by DON DRISCOLL who is Director of VA Operations of Munters Corporation, on behalf of the corporation.


Notary Public

7043108
Registration No.

My commission expires: May 31, 2014

Notary seal:

APPENDIX A
SCHEDULE OF COMPLIANCE
MUNTERS CORPORATION
EPA HAZARDOUS WASTE ID No. VAR 000 011 007

1. **LQG Notification:** By **July 31, 2011**, Munters Corporation shall submit notification as an LQG on EPA Form 8700-12 in accordance with 9 VAC 20-60-315(D). This form 8700 shall signify the date that Munters became LQG in the Comments section. Munters Corporation shall also submit a second EPA Form 8700-12 as soon as it confirms any change in its generation status from that of LQG to SQG. This form 8700 shall signify the date that Munters returned to SQG in the Comments section.

With this form 8700, Munters shall include a diagram of the Facility with a specific designation indicating the storage location of the hazardous waste while it was stored at Munters.

2. **LQG Annual Fee Payment:** By **August 31, 2011**, Munters Corporation shall submit the one thousand dollar (\$1,000.00) annual fee to:

Department of Environmental Quality
Attn: Accounts Receivable
P. O. Box 1104
RICHMOND, VA 23218

3. **Contact:** Unless otherwise specified in this Order, Munters Corporation shall submit all requirements of Appendix A of this Order to:

David Robinett, Enforcement Specialist
VA DEQ –Valley Regional Office
PO Box 3000
Harrisonburg, VA 22801
Office: 540-574-7862
Fax: 540-574-7878
Email: david.robinett@deq.virginia.gov